

The Family Court of the State of Delaware

FELICE GLENNON KERR
JUDGE



NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9445
WILMINGTON, DELAWARE 19801-3703

September 26, 2018

M. S.

LETTER DECISION AND ORDER

M. R. S.

Re: M. S. v. M. R. S.
File No.: CN15-04654; Petition No.: 18-17632
Petition Type: Rule to Show Cause

Dear Ms. S. and Mr. S. :

The Court held a hearing on the above Petition on September 25, 2018. Mother and Father were present for the hearing. Interpreters were also present. Following the testimony, the Court entered a ruling from the bench. This Order memorializes the Order entered on September 25, 2018.

Mother filed a Petition Rule to Show Cause on June 10, 2018. In the Petition, Mother alleged that Father failed to appear for his weekly visitation with T. for three (3) weeks in a row. As a remedy, Mother requested that the Court either modify or cancel Father's visitation as Father was not fulfilling his responsibilities as a Father. Father filed an Answer to Visitation (Rule to Show Cause) on August 22, 2018. Father alleged that he tried calling Mother on June 5, 2018 but Mother had blocked Father's number. Father indicated that he tried to inform Mother that Paternal Grandfather was on his death bed and Father was leaving the country to be with Paternal Grandmother. Father noted that he also sent Mother a text message. Father stated that after Paternal Grandfather's funeral, Father returned to the United States and resumed visitation with T. . Father requested that the Petition be dismissed.

Discussion

A finding of contempt is left to the Court's sound discretion, but the Court must find by clear and convincing evidence that a violation of a Court order has occurred before holding a party in contempt.¹ It is not a defense, in a contempt proceeding, that the party did not have the

¹ *M.B. v. E.B.*, 28 A.3d 495, 500 (Del. Fam. Ct. 2011).

subjective intent to violate the Court's Order.² Even upon a finding of contempt, the Court is not obligated to impose sanctions if it perceives that the party is making a good faith effort to remedy the problems which necessitated the action.³

There are three criteria which must be met for a party to prove civil contempt: 1) there must be a valid order; 2) the alleged contemtor must have the ability to abide by the order; and 3) the alleged contemtor must have disobeyed the order.⁴ The burden of proving the contempt by clear and convincing evidence is on the party claiming the contempt.⁵

The parties agree that there was a valid order in effect, that set out visitation for Father and T. . Father admitted that he failed to appear for four (4) of the visits. Father testified that he learned that Paternal Grandfather was gravely ill. Father flew to Pakistan to be with Paternal Grandfather. Paternal Grandfather passed away. Father returned to the United States after Paternal Grandfather's funeral and resumed his visitation with T. . Father stated that he tried to call Mother to advise her that he had to leave the country. Father indicated that the call would not go through. Father believed Mother blocked his phone number, as when he called the call would not go through or go to the voicemail. Father also stated that he had Troop 6 call Mother and when they called the call went through. Father noted that he also sent Mother a text message to advise her that he was going to be out of the country and would miss his visitation with T. . Father entered the text message into evidence.⁶

Mother testified that Father failed to appear for four (4) consecutive visits. Mother stated that she never received a call or text message from Father informing her that he was going out of the country and would be missing his visitation with T. . Mother noted that she was present at the exchange location every week with T. . Mother also stated that she did not block Father's number.

The Court finds that it is unclear if Father contacted Mother to advise her that he was going out of the country and would be missing visitation with T. . Mother testified that she did not receive a text message or phone call from Father. Father testified that he tried to call Mother but the call would not go through. Father stated that he also sent Mother a text message informing her that he had to go out of the country and would be missing visitation with T. . As the Court cannot determine by clear and convincing evidence which party is telling the truth, the Court finds that Mother failed to meet the clear and convincing standard. As such, Mother's Petition Rule to Show Cause is DENIED. The Court also noted on the record that even if it found Father in contempt, the remedy Mother requested was inappropriate as it would not be in T. 's best interest to cancel Father and T. 's visitation. In addition, Mother's Application to Proceed *In Forma Pauperis* was granted, therefore Mother did not pay a filing fee for the Petition so there would be no need for Father to reimburse Mother in the event contempt was found.

² *Div. of Family Services v. A.B.*, 980 A.2d 1045, 1050 (Del. Fam. Ct. 2009).

³ *M.B. v. E.B.*, 28 A.3d at 500; *see also J.B. v. R.L.*, 2016 WL 2591327, at *21 (Del. Fam. Ct. 2016).

⁴ *M.B. v. E.B.*, 28 A.3d at 500.

⁵ *Id.*

⁶ See Respondent's Exhibit #1.

IT IS HEREBY ORDERED this 26th day of **September, 2018**, that:

1. Mother 's Petition Rule to Show Cause is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

FELICE GLENNON KERR, Judge

FGK/pmw

Date mailed: _____